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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

EAC 02 240 52403

Office: VERMONT SERVICE CENTER

Date: AUG 01 2006

IN RE:

Petitioner:

Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The director originally denied the petition for abandonment, but reopened the matter following a motion in which the petitioner demonstrated the finding of abandonment to be in error. The director subsequently denied the petition on its merits. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be dismissed.

The petitioner, a social worker, seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

The AAO dismissed the petitioner's appeal on November 25, 2005, stating that the petitioner had failed to establish that she was eligible for the waiver as of the petition's July 10, 2002 filing date.

Any motion to reopen a proceeding before the Service filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner. 8 C.F.R. § 103.5(a)(1)(i).

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The petitioner filed the present motion on March 9, 2006, more than two months after the deadline for filing a timely motion. While the motion includes a lengthy statement from counsel and voluminous exhibits, the petitioner does not explain why the delay in filing was reasonable and beyond her control. Neither the petitioner nor counsel appears even to acknowledge that the motion is roughly ten weeks late. Therefore, the petitioner's motion does not meet applicable requirements. We need not discuss the merits of the motion.

We note that on March 27, 2006, shortly after she filed the present motion, the petitioner filed a new petition on her own behalf, seeking the same classification and waiver. The receipt number of the new petition, filed at the Texas Service Center, is SRC 06 136 51584. This new petition was approved on May 6, 2006. Because the AAO is not in possession of the record of proceeding for the approved petition, we cannot comment on any similarities or differences that may exist between that record of proceeding and the record now at the AAO. In any event, the petitioner is now the beneficiary of an approved petition in the same classification that she had sought in the present proceeding.

Because the petitioner has not demonstrated that the delay in filing was reasonable and beyond the control of the petitioner, the motion does not meet the timely filing requirement and must be dismissed pursuant to 8 C.F.R. § 103.5(a)(4).

ORDER: The motion is dismissed.